

“Basic Structure Doctrine Evolution of the Basic Structure Concept”*Shubham Kumar**Guru Gobind Singh Indraprastha University*

The concept of the basic structure of the constitution evolved over time. In this section, we shall discuss this evolution with the help of some landmark judgement related to this doctrine.

A.K. Gopalan Case (1950)

Supreme court contented that there was no violation of Fundamental Rights enshrined in Articles 13, 19, 21 and 22 under the provisions of the Preventive Detention Act, if the detention was as per the procedure established by law. Here, the SC took a narrow view of Article 21.

Shankari Prasad Case (1951)

This case dealt with the amendability of Fundamental Rights (the First Amendment's validity was challenged). The SC contended that the Parliament's power to amend under Article 368 also includes the power to amend the Fundamental Rights guaranteed in Part III of the Constitution.

Berubari Union case (1960)

This case was regarding the Parliament's power to transfer the territory of Berubai to Pakistan. The Supreme Court examined Article 3 in detail and held that the Parliament cannot make laws under this article in order to execute the Nehru-Noon agreement. Hence, the 9th Amendment Act was passed to enforce the agreement.

Golaknath case (1967)

The questions in this case were whether amendment is a law; and whether Fundamental Rights can be amended or not. SC contented that Fundamental Rights are not amenable to the Parliamentary restriction as stated in Article 13, and that to amend the Fundamental rights a new Constituent Assembly would be required. Also stated that Article 368 gives the procedure to amend the Constitution but does not confer on Parliament the power to amend the Constitution.

Kesavananda Bharati case (1973)

This judgement defined the basic structure of the Constitution. The SC held that although no part of the Constitution, including Fundamental Rights, was beyond the Parliament's amending power, the “basic structure of the Constitution could not be abrogated even by a constitutional¹ amendment.” This is the basis in Indian law in which the judiciary can strike down any amendment passed by Parliament that is in conflict with the basic structure of the Constitution.

¹ Amendment

Indira Nehru Gandhi v. Raj Narain case (1975)

The SC applied the theory of basic structure and struck down Clause(4) of article 329-A, which was inserted by the 39th Amendment in 1975 on the grounds that it was beyond the Parliament's amending power as it destroyed the Constitution's basic features.

Menaka Gandhi case (1978)

A main issue in this case was whether the right to go abroad is a part of the Right to Personal Liberty under Article 21. The SC held that it is included in the Right to Personal Liberty. The SC also ruled that the mere existence of an enabling law was not enough to restrain personal liberty. Such a law must also be "just, fair and reasonable."

Minerva Mills case (1980)

This case again strengthens the Basic Structure doctrine.² The judgement struck down 2 changes made to the Constitution by the 42nd Amendment Act 1976, declaring them to be violative of the basic structure. The judgement makes it clear that the Constitution, and not the Parliament is supreme.

Shah Bano Begum case (1985)

Milestone case for Muslim women's fight for rights. The SC upheld the right to alimony for a Muslim woman and said that the Code of Criminal Procedure, 1973 is applicable to all citizens irrespective of their religion. This set off a political controversy and the government of the day overturned this judgement by passing the Muslim Women (Protection on Divorce Act), 1986, according to which alimony need be given only during the iddat period (in tune with the Muslim personal law)

CASE SUMMARY; KESAVANANDA BHARATI VS. STATE OF KERALA

The Kesavananda Bharati case was popularly known as fundamental rights case and also the serious conflict between the Judiciary and the Government. Under this case Supreme Court of India outlined the Basic Structure doctrine of the Constitution which forms and gives basic powers to the Indian Judiciary to review or to amend the provisions of the constitution enacted by the Parliament of India which conflict with or seek to alter the basic structure of the constitution

Before moving to the facts and Judgment of the case one must know the background of the case:

² judgement

1-The Bihar Land Reforms Act, 1950 which was in Contravention of then Fundamental Right to Property (Article 31). It was hit by 13(3) as it was Infringing Article 31 (Part III, Fundamental Rights). The Act was tested in High Court which held the demonstration to be Unconstitutional for being violative of Article 14 of the Constitution.

2-Consequently keeping in mind the end goal to ensure and Validate ³Zamindari Abolition laws, the Government made First Amendment of the Constitution of India which rolled out a few improvements to the Fundamental Rights arrangements of the Constitution. Article 31-Anand 31 B was likewise included. Ninth Schedule was embedded which ensures any Legislation embedded inside the Schedule, from Judicial audit.

3-Henceforth the development to Kesavananda was set apart by a progression of Cases and choices that set the phase for the case itself. At the center of every one of these cases was the essential inquiry: Was Parliament's energy to Amend the Constitution boundless, since it spoken to the will of the general population and its Majority, or was that Power delineated when it went to certain Fundamental Rights of the general population?

FACTS OF THE CASE

1-In February 1970, Swami HH Sri Kesavananda Bharati, Senior head of "Edneer Mutt" a Hindu Mutt arranged in Edneer, a town in Kasaragod Region of Kerala, challenged that the Kerala government's endeavors, under the two state land reform acts, to force limitations on the administration of its property.

2-Despite of the fact that the state conjured its power under Article 21, an Indian legal scholar, Nanabhoy Palkhivala, persuaded the Swami into filing his petition of under Article 26, concerning the privilege to oversee religiously claimed property without government obstruction.

3-The enormous battle was foreseen. Real revisions to the Constitution (the 24th, 25th, 26th and 29th) had been sanctioned by Indira Gandhi's legislature through Parliament to get over the judgments of the Preeminent Court in R.C. Cooper (1970) , ⁴Madhavrao Scindia (1970) and Golak Nath.

4-The first had struck down bank nationalization, the second had abrogated the nullification of privy satchels of previous rulers and the third had held that the revising force couldn't touch Principal Rights.

³ zamindari

⁴ Madhavrao sc india1970 and golak nath

5-Every one of these corrections was under test in Kesavananda. Since Golak Nath was chosen by eleven judges, a bigger seat was required to test its rightness. Thus 13 judges were to sit on the Kesavananda case.

ANALYSIS OF THE CASE:

The Supreme Court of India has reviewed the decision in Golaknath v. State of Punjab, and considered the validity of the 24th, 25th, 26th and 29th amendments. The case was of Kesavananda was heard by the largest ever ⁵Constitutional Bench of 13 Judges. The Bench gave eleven separate judgements which are agreed on some point and disagreed on others.

- Despite the fact that the hearings expended five months, the result would significantly influence India's popularity based procedures.

⁵ Constitution bench